REMARKS

Applicants respectfully request entry of the above amendments and reconsideration of the following arguments pursuant to 37 C.F.R. § 1.111.

1. Status of the Claims

Claims 1-6 and 8-35 stand pending. Claims 20-31 and 33-35 stand withdrawn. Claims 1-26, 8-19 and 32 stand rejected.

2. Summary of the Response

In this response, claims 1, 4-6, 8-10, and 32 are amended; and no claim is canceled or added. Thus, claims 1-6 and 8-35 stand pending, with claims 20-31 and 33-35 withdrawn.

Support for the foregoing amendments can be found, for example, in at least the following locations in the original disclosure: the original claims and the specification, page 13, lines 19-35 and page 21, lines 5-18.

The amendments accordingly do not introduce subject matter not supported by the specification as filed. The amendments are made without disclaimer or prejudice to Applicants' rights to pursue the subject matter in this or a continuing application.

3. Request for consideration of Information Disclosure Statement (IDS)

Applicants request consideration of the IDS filed April 12, 2010 and the IDS filed herewith. Applicants note with appreciation the consideration of the IDS filed December 8, 2008.

4. Provisional Rejection under the Doctrine of Obviousness-Type Double Patenting

Claims 1-6, 8-12, and 32 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-21, 3 and 34-36 of co-pending Application No. 10/485,456 in view of Kelley et al., *Lipids* (1998).

Because this is a provisional double patenting rejection, Applicant respectfully requests that any response to this rejection be held in abeyance until it is the only remaining rejection in the application. At that time, Applicants will consider the appropriateness of filing a terminal disclaimer.

5. Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 1-6, 8-19 and 32 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement for including alleged new matter.

Applicants respectfully traverse the rejection. The specification as filed provides explicit support for a daily intake of arachidonic acid of at least 200 mg. As acknowledged by the Office, page 19, lines 7-9 of the instant specification discloses that the daily intake of arachidonic acid from food in the Kansai region of Japan is between 0.19 and 0.20 g. Immediately following these lines, page 19, lines 13-14 of the instant specification discloses that arachidonic acid is ingested in corresponding amounts or greater. Corresponding amounts would include 200 mg and "or greater" of 200 mg would fully support "at least 200 mg". Applicants acknowledge that, also on page 19 of the instant specification, specific ranges are provided for the amount of arachidonic acid to be ingested. However, disclosing specific ranges does not render the broader range unsupported where that range is explicitly disclosed.

For at least the above reasons, "daily arachidonic acid intake of at least 200 mg" is not new matter, and thus the rejection is improper and should be withdrawn.

6. Rejection of the Claims Under 35 U.S.C. § 102(b)

Claims 1 and 13-19 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Kelley et al., "Arachidonic Acid Supplementation Enhances Synthesis of Eicosanoids Without Suppressing Immune Functions in Young Healthy Men," *Lipids*, 1998, 33(2): 125-130 (hereinafter "*Kelley*").

Applicants respectfully traverse the rejection. To establish a *prima facie* case of anticipation, a single prior art reference must teach each and every element of the claimed invention, either explicitly or inherently. *Verdegaal Bros. v. Union Oil Co. Cal.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Claim 1 has been amended to recite "wherein the composition contains no eicosapentaenoic acid or an amount not exceeding 1/5 of the arachidonic acid in the composition." *Kelley* fails to disclose at least this element of claim 1.

Specifically, *Kelley* fails to disclose the concentration of eicosapentaenoic acid and arachidonic acid present in the oil added to the diet in accordance with the study.

Further, Applicants note that *Kelley* fails to disclose administering the recited composition "to prevent decline, improve, or enhance cognitive ability responds of the healthy person." Instead, *Kelley* administers an arachidnoic acid containing oil to healthy persons to test human immune response and on the secretion of prostaglandin E2 and leukotriene B4, none of which relates to prevention of decline improvement or enhancement of cognitive ability responses.

For at least these reasons, *Kelley* fails to disclose each and every element of claim 1, and thus no *prima facie* case of anticipation is established. Dependent claims 2-5, 13-19, and 32, which depend from claim 1, are also not anticipated for at least reasons similar to those for claim 1. For at least these reasons the rejection should be withdrawn.

7. Rejection of the Claims Under 35 U.S.C. § 103(a)

Claims 1, 2, 8, 9, 13-19, and 32 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over *Kelley* in view of U.S. Patent No. 5,583,019 ("*Barclay*"). Claims 1-6, 8-19 and 32 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over *Kelley* and *Barclay* as applied to claims 1, 2, 8, 9, 13-19 and 32 above, further in view of JP 08-214891 ("the '891 application").

Applicants respectfully traverse these rejections. Claims 1, 6, and 10 have been amended to recite "wherein the composition contains no eicosapentaenoic acid or an amount not exceeding 1/5 of the arachidonic acid in the composition." For at least reasons presented in section 6 above, *Kelley* fails to disclose at least these elements of the claims. Further, *Barclay* and the '891 application fail to remedy at least this deficiency of *Kelley*.

Specifically, the '891 application, which is relied upon for the alleged disclosure of triglycerides with medium-chain fatty acids bound at the 1,3-positions and arachidonic acid bound at the 2-position also discloses compositions with EPA concentrations that are higher than the arachidonic acid concentration (*see, e.g.*, Tables 1-3). Therefore, there would have been no expectation of success from the disclosures of *Kelley*, *Barclay*, and the '891 application of

administering a composition containing EPA in an amount not exceeding 1/5 of the arachidonic acid.

Further, Applicants note that *Kelley* fails to disclose administering the recited composition "to prevent decline, improve, or enhance cognitive ability responds of the healthy person." Instead, *Kelley* administers an arachidnoic acid containing oil to healthy persons to test human immune response and on the secretion of prostaglandin E2 and leukotriene B4, none of which relates to prevention of decline improvement or enhancement of cognitive ability responses. *Barclay* and the '891 application also fail to remedy at least this deficiency of *Kelley*.

For at least the above reasons, no *prima facie* case of obviousness has been established for claims 1, 6, and 10. Dependent claims 4-5, 8-9, 11-19 and 32, which depend from claims 1, 6, or 10, respectively, are also not obvious for at least the reasons for claims 1, 6, and 10. For at least these reasons, the rejection should be withdrawn.

Claims 1, 2, 6, 8 and 13-19 stand rejected under 35 U.S.C. § 103(a) allegedly as being unpatentable over U.S. Publication No. 2002/0040058 ("*Kiliaan*"). Claims 1, 2, 6, 8 and 13-19 stand rejected under 35 U.S.C. § 103(a) allegedly as being unpatentable over *Kiliaan* in view of *Barclay*. Claims 1-6 and 8-19 stand rejected under 35 U.S.C. § 103(a) allegedly as being unpatentable over *Kiliaan* in view of the '891 application.

Applicants respectfully traverse the rejection. Claims 1, 6, and 10 have been amended to recite "wherein the composition contains no eicosapentaenoic acid or an amount not exceeding 1/5 of the arachidonic acid in the composition." *Kiliaan*, *Barclay*, and the '891 application each fail to disclose at least this element of the claims.

Specifically, *Kiliaan* discloses that the ratio of omega-3 fatty acids to omega-6 fatty acids is about 2.5 to 5.5 wt/wt (*see, e.g.*, p. 3, para. 37). Further, *Kiliaan* discloses that dihomogammalinolenic acid (DHGLA) and arachidonic acid should be included in an amount of about one fourth of the amount of eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA) (*see, e.g.*, p. 3, para. 38). *Kiliaan* fails to disclose any embodiment in which EPA does not exceed 1/5 of the arachidonic acid in the composition. In contrast, *Kiliaan* appears to lead one of ordinary skill in the art to compositions having more EPA than arachidonic acid.

Barclay and the '891 application fail to remedy at least this deficiency of *Kiliaan*. Specifically, the '891 application, which is relied upon for the alleged disclosure of triglycerides with medium-chain fatty acids bound at the 1,3-positions and arachidonic acid bound at the 2-position also discloses compositions with EPA concentrations that are higher than the arachidonic acid concentration (*see, e.g.*, Tables 1-3). Therefore, there would have been no expectation of success from the disclosures of *Kiliaan*, *Barclay*, and the '891 application of administering a composition containing EPA in an amount not exceeding 1/5 of the arachidonic acid.

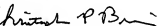
Thus, for at least this reason, no *prima facie* case of obviousness has been established. Dependent claims 4-5, 8-9, 11-19 and 32, which depend from claims 1, 6, or 10, respectively, are also not obvious for at least reasons similar to those for claims 1, 6, and 10. For at least these reasons the rejection should be withdrawn.

CONCLUSION

Should the Office have any questions or comments regarding Applicants' amendments or response, please contact Applicants' undersigned representative at (202) 842-8821. Furthermore, please direct all correspondence to the below-listed address.

In the event that the Office believes that there are fees outstanding in the above-referenced matter and for purposes of maintaining pendency of the application, the Office is authorized to charge the outstanding fees to Deposit Account No. 50-0573. The Office is likewise authorized to credit any overpayment to the same Deposit Account Number.

Respectfully Submitted,

Date: October 13, 2010 By: 

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